

Ordinance No.: 16-25
Zoning Text Amendment No: 08-15
Concerning: Arts or Entertainment Use –
CBD Zones
Draft No. & Date: 3 – 10/1/08
Introduced: June 24, 2008
Public Hearing: July 29, 2008
Adopted: October 7, 2008
Effective: October 7, 2008

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: District Council at the Request of the County Executive

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- establish a definition for an arts or entertainment use;
- expand the means to satisfy the public use space and public facility and amenity requirements of the optional method of development in the CBD zones under certain circumstances;
- amend the findings required for approval of a project plan;
- amend certain development standards for a project that includes an arts or entertainment use; and
- allow for the establishment of a different project plan and site plan validity period for an arts or entertainment use.

By amending the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

DIVISION 59-A-2 “DEFINITIONS AND INTERPRETATION”
Section 59-A-2.1 “Definitions”

DIVISION 59-C-6 “CENTRAL BUSINESS DISTRICT ZONES”
Section 59-C-6.23 “Development Standards”
Section 59-C-6.233 “Minimum Public Use Space (percent of net lot area)”
Section 59-C-6.234 “Maximum Density of Development”

DIVISION 59-D-2 “PROJECT PLAN FOR OPTIONAL METHOD OF
DEVELOPMENT, CBD ZONES AND RMX ZONES”
Section 50-D-2.4 “Action by planning board”

Section 59-D-2.42	"Findings required for approval"
Section 59-D-2.7	"Duration of validity period and actions required to validate the plan"
DIVISION 59-D-3	"SITE PLAN"
Section 59-D-3.8	"Validity"

By adding the following section to the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

Section 59-C-6.2356 "Special regulation for optional method development projects that include an arts or entertainment use"

EXPLANATION: ***Boldface** indicates a heading or a defined term.*
Underlining indicates text that is added to existing laws by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by the original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment*

Opinion

Zoning Text Amendment (ZTA) 08-15, sponsored by the District Council at the request of the County Executive, was introduced on June 24, 2008. ZTA 08-15 proposes to allow building gross floor area for an arts or entertainment use equal to 20 percent of the net lot area to satisfy the public use space and public amenity requirements for an optional method of development project in Central Business District (CBD) zones. Any such building space would need to be located in an arts and entertainment district. The ZTA would establish criteria for the Executive to accept any such arts or entertainment use space. The maximum floor area allowed by the zone would exclude the arts or entertainment use space. Under certain circumstances, a project would not be required to provide a sector plan-recommended pedestrian path on private property.

The Planning Board recommended rejecting ZTA 08-15. In the opinion of the Planning Board, ZTA 08-15 is a shotgun approach that risks producing inferior development results.

The Executive expressed support for the ZTA as submitted. The Executive believed that ZTA 08-15 would:

- 1) provide a public benefit potentially years before the development of the site providing the land;
- 2) stimulate economic development in targeted areas;
- 3) avoid penalizing a developer for transferring land before construction;
- 4) encourage private developers to provide land for arts and entertainment uses at no cost to the County for the land;
- 5) be a good deal for the County even though the development could have less public use space than other projects, because such projects would be located in Arts and Entertainment Districts in the County's urban areas and would provide meaningful, enriching cultural opportunities for public enjoyment; and
- 6) provide an incentive for arts or entertainment space; such space in an urban area would be more valuable and relevant to the public than traditional plazas that accompany optional method of development projects.

The Council held a public hearing on ZTA 08-15 on July 29, 2008. Other than the Chairman of the Planning Board, every speaker was in favor of ZTA 08-15. The speakers observed that the ZTA would allow the Executive's plans to have Live Nation music hall locate on property in Silver Spring currently owned by the Lee Development Group. The Lee Development Group also urged the passage of ZTA 08-15 as introduced. They think the terms of ZTA 08-15 are reasonable to offset the problems and risks created by transferring land before developing their site. Representatives from AFI and Montgomery College spoke in favor of the music hall as an enhancement to their existing activities. A local musician based his support on the County's lease agreement with Fillmore that provides for the free use of the Fillmore facility 6 times per year (in addition to 30 discounted community and public uses). A resident suggested that the ZTA was critical to completing Silver Spring. One speaker believed that the Planning Board's objection was due to its perceived power, authority, and control, more than what makes sense for Silver Spring. In a letter to the Council dated July 29, 2008, Governor O'Malley urged support for ZTA 08-15 as part of his strong support for a downtown Silver Spring music hall.

The vast majority of written testimony supported ZTA 08-15, including one comment that "it does provide flexibility that could have an enormous beneficial effect in all present and future Arts and Entertainment Districts throughout the County". Executive staff pointed out that the ZTA would have applicability in three Arts and Entertainment Districts and that, given difficult economic times, the ZTA would be an incentive to encourage projects that would give land to the County to create cultural opportunities in the Arts and Entertainment Districts. The County Executive indicated that, in addition to creating the ability to get arts and entertainment land at no charge in Silver Spring, this tool will help to create economic revitalization opportunities in Wheaton.

On September 29, 2008 the PHED Committee held a worksession on ZTA 08-15. The Committee recommended approval of ZTA 08-15 with the following amendments:

- 1) including the following assignment of responsibilities between the Executive and the Planning Board: "The public facilities and amenities requirement is satisfied if the applicant conveys an appropriate amount of land or building space that is accepted by the County and

approved by the Planning Board for an arts and entertainment use” (2-1, Councilmember Floreen opposed).

- 2) adding 2 more criteria for the Executive to accept arts or entertainment space:
 - a) the land or floor area for arts use must be conveyed to the County before the start of the project’s principal construction; and
 - b) any project requiring public funding must be in the CIP.
- 3) including the proposal by Councilmember Praisner that would remove the Police Department’s role in making pre-application decisions on pedestrian paths, and would define criteria to indicate when a sector plan’s recommendation for a mid-block pedestrian path is not required.

The District Council reviewed Zoning Text Amendment No. 08-15 at a worksession held on October 7, 2008. The Council disagreed with the some of the Committee’s recommended amendments to ZTA 08-15. The Council agreed that ZTA 08-15 will encourage creation of arts and entertainment opportunities by providing property to the County and is a useful tool to assist with economic revitalization. The Council agreed with the Executive that more creative approaches are needed in our urban areas to create meaningful opportunities for public enjoyment, and that arts or entertainment space should satisfy both the public use space and the public facilities and amenities requirement of an optional method of development project, if land or interior space is conveyed to the County that equals 20 percent of the net lot area of the project. The Council further believed that the Executive should have the authority to proceed with accepting land for arts or entertainment space only if the Council approves a resolution recommending such a transaction. The Council’s involvement would require findings that a proposed arts and entertainment use would: 1) have a positive economic revitalization or economic impact on the Arts and Entertainment District; 2) provide opportunities for public use; and 3) create cultural opportunities that do not otherwise exist in the Arts and Entertainment District. Finally, the Council agreed with the Committee’s recommendation to dispense with the sector plan conformance requirement for certain mid-block pedestrian paths on private property that lead pedestrians to mid-block crossings of major highways or that do not have continuity on confronting properties.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted, and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 08-15 will be approved as amended.

Ordinance

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-A-2 is amended as follows:

DIVISION 59-A-2. DEFINITIONS AND INTERPRETATION.

59-A-2.1 Definitions

* * *

Arts or Entertainment Use. An activity that is dedicated to the visual or performing arts and is readily accessible to the public, including:

(a) live performance of music, theater, or dance;

(b) the production of art, fine crafts, digital imagery, or film;

(c) radio production; or

(d) a museum.

* * *

Sec. 2. DIVISION 59-C-6 is amended as follows:

DIVISION 59-C-6. CENTRAL BUSINESS DISTRICT ZONES.

* * *

59-C-6.23. Development Standards.

* * *

	CBD-1		CBD-2		CBD-3	
	S ⁹	O	S ⁹	O	S ⁹	O
59-C-6.233. Minimum Public Use Space (percent of net lot area)	10	20 ^{20*} ₋	10	20 [*] ₋	10	20 [*] ₋
* * *						

	CBD-1		CBD-2		CBD-3	
	S ⁹	O	S ⁹	O	S ⁹	O
59-C-6.234. Maximum Density of Development						
* * *						
(b) Optional Method of development (see section 59-C-6.215(b)):						
* * *						
(ii) Nonresidential, including transient lodging (FAR):		2 ^{19,**}		4**		6**
(iii) Mixed-use.						
-- Maximum permitted nonresidential, including transient lodging (FAR) limited to:		2 ^{11(5)4,**}		3 ^{5,**}		5 ^{11(5)16,** (1,1)}
-- Total FAR ^{13, 15}		3**		5**		8**

* The entire optional method public use space requirement is satisfied if[(1)] the applicant has provided to the County, by conveyance or dedication, land or building space to accommodate an arts or entertainment use under Section 59-C-6.2356[(; and (2) the gross floor area of the space available for the arts or entertainment use equals at least 20% of the net lot area)].

** The gross floor area of the arts or entertainment use that satisfies the public use space and the public facility and amenity requirements for the optional method of development under Section 59-C-6.2356 must not be counted in the gross floor area of the optional method project .

* * *

17 **59-C-6.2356 Special standards for optional method of development projects**
 18 **that include an arts or entertainment use.**

19 (a) In the CBD-1, CBD-2, and CBD-3 zones, the land or building space
 20 for an arts or entertainment use satisfies the entire public use space
 21 requirements under Sections 59-C-6.233 and 59-C-6.234 and the
 22 entire public facility and amenity requirement for the Optional

Method of Development required under Section 59-C-6.215(b) if
when the applicant files the original application for an optional
method project:

- (1) the arts or entertainment use is located in an area designated as
an Arts and Entertainment District under State law; [[and]]
- (2) the proposed total interior area for all floors of the arts or
entertainment building space conveyed or dedicated is at least
20 percent of the net lot area;
- (3) the applicant agrees to the conveyance of land or floor area for
arts or entertainment use and has a signed conveyance
agreement with the County; and
- [[(2) the Executive agreed in writing to accept a conveyance or
dedication of land or a building space to accommodate an arts
or entertainment use, after the Executive determined in an
Executive Order that the arts or entertainment use will provide:
 - (A) a positive economic impact by generating activity and by
complementing area businesses in the Arts and
Entertainment District;
 - (B) for public use of a facility that accommodates an arts or
entertainment use; and
 - (C) cultural opportunities for the public that do not otherwise
exist in the Arts and Entertainment District.]]
- (4) The County Council by resolution has recommended that the
Executive accept a conveyance or dedication of land or a
building space to accommodate an arts or entertainment use.
The Council in the resolution must find that the arts and
entertainment use will:

- (A) have a positive economic revitalization or economic impact in the Arts and Entertainment District;
- (B) provide an opportunity for public use; and
- (C) create unique cultural opportunities for the public in the Arts and Entertainment District.

(b) After land or building space for an arts or entertainment use is transferred to the County:

- (1) the entire public use space and public amenity space requirement is satisfied for any amendment to the original project plan; and
- (2) the Executive may transfer or lease the land or building space without any effect on the approval of the project plan or site plan.

(c) Standard streetscaping improvements along the frontage of the phase of the project that is intended to accommodate an arts or entertainment use must be required during the phase of the project that contains the arts or entertainment use. Standard streetscaping improvements, beyond the improvements required for the frontage of the phase of the project associated with the arts or entertainment use, must be required with the phase of the project associated with the standard streetscaping improvements being required.

* * *

Sec. 3. DIVISION 59-D-2 is amended as follows:

**DIVISION 59-D-2. PROJECT PLAN FOR OPTIONAL METHOD
OF DEVELOPMENT IN CBD, TOMX, AND RMX
ZONES.**

* * *

Sec. 59-D-2.4. Action by planning board.

* * *

59-D-2.42. Findings required for approval.

* * *

(b) * * *

(3) locating any required public use space off-site.

An optional method of development project need not conform to the applicable sector plan's or urban renewal plan's recommendation to provide a mid-block pedestrian path on private property [[,]] if [[,]]the applicable plan does not recommend the continuation of the mid-block pedestrian path on confronting private property across a road right-of-way, or if the applicable plan recommends that the mid-block pedestrian path cross a major highway [[when the initial project plan application is filed, the County Police Department finds, in a Crime Prevention Through Environmental Design Review or equivalent review, that the recommended path would create an unsafe pedestrian environment.]]

* * *

59-D-2.7. Duration of validity period and actions required to validate the plan.

* * *

(b) Validity Period.

(1) An approved project plan will remain valid for up to 24 months from the initiation date, provided applicant has filed a complete site plan application, as determined by the Planning Board staff within 18 months of the initiation date; and, in the absence of governmental delay, received site plan approval within 6 months of the assigned complete application date. The timely approval of a site plan validates a project plan.

(2) The validity period for a project plan that contains land or building space for an arts or entertainment use approved under Section 59-C-6.2356 is governed by Section 50-34(h).

* * *

Sec. 4. DIVISION 59-D-3 is amended as follows:

DIVISION 59-D-3. SITE PLAN

* * *

59-D-3.8. Validity.

* * *

(b) The effective period of a certified site plan depends on the expiration date of the underlying approved preliminary plan. The site plan takes effect when the final record plat is recorded for all of the property covered by the approved preliminary plan. Where phasing of development is required, each phase takes effect as provided in the preliminary plan. The effective period for a site plan that includes land or building space for an arts or entertainment use approved under Section 59-C-6.2356 is governed by Section 50-20(c)(3)D. After the

record plat is recorded, the certified site plan does not expire or
require amendment before a building permit is issued unless:

* * *

Sec. 5. Effective date. This ordinance takes effect [[20 days after the date
of]] immediately upon Council adoption.

This is a correct copy of Council action.

Linda M. Lauer

Linda M. Lauer, Clerk of the Council